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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,016	03/23/2001	Betsy P. Colwell	02200-1	9104

7590

04/18/2002

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EXAMINER

GRILES, BETHANY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 04/18/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/816,016

Applicant(s)

COLWELL, BETSY P.

Examiner

Bethany L. Griles

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

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**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-32 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. The invention, as claimed by the applicant, is substantially disclosed in the electronic catalog found at [www.birdsforever.com/dunfeed](http://www.birdsforever.com/dunfeed) where it is described as the "Duncraft Metal Haven Wild Bird Feeder".

Regarding claim 1, 27, and 32, Duncraft discloses a selective housing having at least one sidewall and base (see first fig); a seed holder contained within the selective housing (see first fig).

Regarding claim 2, Duncraft discloses a space disposed between a sidewall of the seed holder and at least one sidewall of the selective housing (see fig).

Regarding claim 3, Duncraft discloses that the space is about 1 inch (see first fig).

Regarding claim 4, Duncraft discloses that the space is about 1.5 inches (see second fig).

Regarding claim 5, Duncraft discloses that the space is about 2.0 inches (see second fig).

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Regarding claim 6, Duncraft discloses that the seed holder is supported on the base of the selective housing (see first fig).

Regarding claim 7, Duncraft discloses that the base of the selective housing is substantially solid (see first fig).

Regarding claim 8, Duncraft discloses that the base of the selective housing includes apertures (see third figure)

Regarding claim 9, Duncraft discloses that at least one sidewall of the selective housing includes apertures having a maximum dimension of about 1 inch (see first fig).

Regarding claim 10, Duncraft discloses that at least one sidewall of the selective housing includes apertures having a maximum dimension of about 1.5 inches (see second fig).

Regarding claim 11, Duncraft discloses that at least one sidewall of the selective housing includes apertures having a maximum dimension of about 2.0 inches (see second fig).

Regarding claim 12, Duncraft discloses that the top of the selective housing is substantially solid (see second fig).

Regarding claim 13, Duncraft discloses that the top of the selective housing includes apertures (see third fig).

Regarding claim 14, Duncraft discloses that the apertures have a maximum dimension of about 1.0 inch (see first fig).

Regarding claim 15, Duncraft discloses that the apertures have a maximum dimension of about 1.5 inches (see second fig).

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Regarding claim 16, Duncraft discloses that the apertures have a maximum dimension of about 2.0 inches (see second fig).

Regarding claim 17, Duncraft discloses that the removable top directly contains the seed holder (see first fig).

Regarding claim 18, Duncraft discloses that the seed holder includes a cap with a removable top in direct contact (see first fig).

Regarding claim 19, Duncraft discloses that the removable top is spaced apart from the seed holder (see second fig).

Regarding claim 20, Duncraft discloses that the removable top includes an aperture through which a portion of the seed holder extends (see first fig).

Regarding claim 21, Duncraft discloses that the seed holder includes a cap, and a space between the removable top and the cap (see fig 2).

Regarding claim 22, Duncraft discloses that the spacing between the cap and the removable top is adjustable (see second fig).

Regarding claim 23, Duncraft discloses that the spacing is adjustably limited (see first fig).

Regarding claim 24, Duncraft discloses that the top is substantially solid (see first fig).

Regarding claim 25, Duncraft discloses that the top includes apertures (see third fig).

Regarding claim 26, Duncraft discloses that the seed holder extends through the top (see first fig).

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Regarding claim 28, Duncraft discloses that the selective housing includes a base on which the seed holder is supported (see first fig).

Regarding claim 29, Duncraft discloses that the seed holder includes a base on which the selective housing is supported (see first fig).

Regarding claim 30, Duncraft discloses a hanger attached to the top (see first fig).

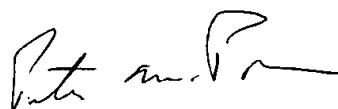
Regarding claim 31, Duncraft discloses that the hanger is attached to the seed holder (see first fig).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703.308.2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703.306.4196 for regular communications and 703.305.3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.306.5771.



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